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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 PAUL MEGINO, *et al.*,

11 Plaintiffs,

12 v.

13 LINEAR FINANCIAL, DBA PARDEE
14 HOMELOANS, *et al.*,

15 Defendants.

Case No. 2:09-CV-00370-KJD-GWF

ORDER

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17 Presently before the Court is Defendant Linear Financial L.P.'s ("Linear") (incorrectly named
18 as Linear Financial) and Well Fargo Bank, N.A.'s (incorrectly named as Wells Fargo Home
19 Mortgage) ("Wells Fargo" and together with Linear, the "Defendants") Motion to Dismiss (#6) and
20 Motion to Release Lis Pendens (#10). The Court has also considered Defendants Request for
21 Judicial Notice (#7). Though the time for doing so has passed, Plaintiffs have failed to file a
22 response in opposition to Defendants' Motion to Dismiss. Therefore, in accordance with Local Rule
23 7-2(d) and good cause being found, the Court grants the motion to dismiss.

24 **I. Background and Procedural History**

25 On October 27, 2008, Plaintiffs filed a complaint (the "Complaint") in Nevada state court on
26 October 27, 2008 and recorded a "Lis Pendens/Notice of Pendency of Action" (the "Lis Pendens") on

1 the same day. After being served, Defendants removed to federal court based upon federal question
2 jurisdiction (#1). Defendants subsequently filed a Suggestion of Bankruptcy upon discovery that
3 Plaintiffs had filed a chapter 7 bankruptcy petition with the United States Bankruptcy Court, District
4 of Nevada (the "Bankruptcy Court") (#4). On February 2, 2009, the Bankruptcy Court entered an
5 order granting Defendants stay relief to pursue the pending foreclosure of the Plaintiffs' property
6 (#9). On May 20, 2010, the Bankruptcy Court granted Wells Fargo additional stay relief, clarifying
7 that Wells Fargo could proceed to defend the instant litigation. Therefore, having considered
8 Defendants' Motion and for good cause appearing pursuant to FRCP 12(b)(6), this Court hereby
9 enters the following Order granting Defendants' Motion to Dismiss with findings of fact and
10 conclusions of law and extinguishing the Lis Pendens.

11 **II. Findings of Fact**

12 In September 2006, Plaintiffs obtained an adjustable rate mortgage from Linear in the amount
13 of \$384,000.00 to finance the purchase of 8513 Brackenfield Avenue, Las Vegas, Nevada, 89178,
14 APN 176-28-210-012 (the "Property"), as reflected in a deed of trust recorded on September 11,
15 2006 ("Linear Deed of Trust"). Concurrently with the recordation of the Linear Deed of Trust,
16 Linear assigned the Linear Deed of Trust, together with the note, to Wells Fargo, as reflected in the
17 assignment of deed of trust recorded on September 11, 2006 ("Wells Fargo Assignment") as
18 permitted by paragraph 20 of the Linear Deed of Trust ("[t]he Note or a partial interest in the Note
19 (together with this Security Instrument) can be sold one or more times without prior notice").

20 The Linear Deed of Trust specifically provided, in bold text, that upon default Linear
21 possessed the right of acceleration and sale at a public trustee's sale in accordance with the terms of
22 the deed of trust and applicable law and further provided for a change in the loan servicer. See id.
23 After Plaintiffs' default on the loan obligations, Defendant National Default Servicing Corporation
24 ("NDSC") recorded the notice of default and election to sell on April 4, 2008. Plaintiffs filed the
25 Complaint in an apparent preemptive attempt to prevent a foreclosure sale of the Property.

1 The Complaint sets forth the following claims for relief: (1) Truth in Lending Act (15 U.S.C.
 2 § 1601, et seq.) (“TILA”); (2) Real Estate Settlement Procedures Act (12 U.S.C. § 2601, et seq.)
 3 (“RESPA”); (3) Home Ownership and Equity Protection Act of 1994 (“HOEPA”); (4) Fair Debt
 4 Collection Practices Act (“FDCPA”) under 15 U.S.C. § 1692; (5) Fiduciary Duty; (6) Covenant of
 5 Good Faith and Fair Dealing; (7), (8) Injunctive Relief; (9) Declaratory Relief; (10) Fraud; (11)
 6 Negligence (Suitability of Loan); (12) Negligence Per Se; (13) Negligent Misrepresentation; and (14)
 7 Intentional Misrepresentation.

8 **III. Conclusions of Law**

9 **A. Standard**

10 Nevada LR-7-2 provides in pertinent part that “[t]he failure of an opposing party to file points
 11 and authorities in response to any motion shall constitute a consent to the granting of the motion.”
 12 However, failure to file an opposition to a motion to dismiss is not cause for automatic dismissal.
 13 See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Before dismissing the action, the district court
 14 is required to weigh (1) the public’s interest in expeditious resolution; (2) the court’s need to manage
 15 its docket; (3) the risk of prejudice; (4) the public policy favoring disposition of cases on their merits;
 16 and (5) the availability of less drastic sanctions. Id. (quoting Henderson v. Duncan, 779 F.2d 1421,
 17 1423 (9th Cir. 1986)). In this case, these factors weigh toward dismissal. The public’s interest in
 18 expeditious resolution of litigation, the court’s need to manage its docket, and the lack of prejudice
 19 weigh in favor of granting the Motion to Dismiss.

20 Additionally, the motion itself has merit. Rule 12(b) of the Federal Rules of Civil Procedure
 21 (“FRCP”) provides in relevant part:

22 Every defense to a claim for relief in any pleading must be asserted in the responsive
 23 pleading if one is required. But a party may assert the following defenses by motion:
 24 ... (6) failure to state a claim upon which relief can be granted....

25 To survive a 12(b)(6) motion, a complaint must be pled in such a fashion as to demonstrate
 26 the plaintiff’s entitlement to relief. This requires that a complaint provide, “a short and plain

1 statement of the claim showing that the pleader is entitled to relief.” FRCP 8(a)(2); Bell Atlantic
2 Corp. v. Twombly, 550 U.S. 544, 555 (2007). Although FRCP 8 does not require detailed factual
3 allegations, it demands more than “labels and conclusions” or a “formulaic recitation of the elements
4 of a cause of action.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Papasan v. Allain, 478
5 U.S. 265, 286 (1986)). “Factual allegations must be enough to rise above the speculative level.”
6 Twombly, 550 U.S. at 555. Thus, to survive a Rule 12(b)(6) motion, a complaint must contain
7 sufficient factual matter to “state a claim to relief that is plausible on its face.” Iqbal, 129 S. Ct. at
8 1949 (internal citation omitted).

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10 In Iqbal, the Supreme Court clarified the two-step approach district courts are to apply when
11 considering such motions. First, the Court must accept as true all well-pled factual allegations in the
12 complaint; however, legal conclusions are not entitled to the assumption of truth. Id. at 1950. Mere
13 recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice.
14 Id. at 1949. Second, the Court must consider whether the factual allegations in the complaint allege
15 a plausible claim for relief. Id. at 1950. A claim is facially plausible when the plaintiff’s complaint
16 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the
17 alleged misconduct. Id. at 1949. Where the complaint does not permit the court to infer more than
18 the mere possibility of misconduct, the complaint has “alleged--but not shown--that the pleader is
19 entitled to relief.” Id. (internal quotation marks omitted). When the claims in a complaint have not
20 crossed the line from conceivable to plausible, plaintiff’s complaint must be dismissed. Twombly,
21 550 U.S. at 570. This “requires more than labels and conclusions, and formulaic recitation of [a
22 cause of action’s elements] will not do.” Bell Atl. Corp. v. Twombly, 550 US. 544, 555 (2007).
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1 **B. Plaintiffs Failed to State a Claim For Relief Against Defendants**

2 i. TILA, RESPA, HOEPA

3 Plaintiffs' TILA, RESPA and HOEPA claims lack merit. In support of the TILA
4 claim, Plaintiffs allege that Defendants (i) refused to make a full accounting and required
5 disclosures, (ii) improperly retained unspecified funds belonging to Plaintiffs, and (iii) failed to
6 disclose the ownership of the loans. These vague, conclusory allegations do not state a plausible
7 claim for relief. Plaintiffs have not identified any actions in violation of TILA or otherwise
8 identified specific disclosures that were not provided to them or that Plaintiffs, at any time,
9 communicated a request for an accounting to Defendants. Even if such allegations were sufficient to
10 state a plausible claim, relief is unavailable for Plaintiffs' TILA claim.
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12 TILA provides a one-year statute of limitations period for claims for civil damages.
13 See 15 U.S.C. § 1640(e); 1635(a). The statute of limitations begins to run from the date of closing on
14 the transaction. See King v. California, 784 F.2d 910, 915 (9th Cir. 1986). However, under King,
15 equitable tolling is available to stay the statute of limitations if Plaintiffs have been prevented from
16 discovering any potential claims for fraud against Defendants. See id.
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18 Here, Plaintiffs' loan transaction closed on or about September 6, 2006. Thus, a
19 claim for damages should have been made no later than September 6, 2007. Plaintiffs filed this
20 action on October 11, 2008, well after the applicable statute of limitations. Equitable tolling would
21 not stay the statute of limitations here because Plaintiffs have not adequately alleged facts showing
22 that they were prevented from discovering this claim earlier. Accordingly, the Court dismisses
23 Plaintiffs' claim for violation of TILA.
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1 In support of the RESPA claim, Plaintiffs assert that Defendants (i) placed Plaintiffs
2 into loans for the purpose of unlawfully increasing or obtaining yield spread fees and (ii) servicing
3 contract or duties thereunder were transferred without the required notice. Plaintiffs' "shotgun"
4 pleading against all Defendants in support of this claim, which pleading reads as if Plaintiffs located
5 selected portions of RESPA and pasted them into the Complaint as factual allegations, do not cross
6 the line into creating a plausible claim for relief. RESPA, moreover, provides a one-year statute of
7 limitations period for claims arising under 12 U.S.C. § 2607 (yield spread premiums). See 12 U.S.C.
8 § 2614. Accordingly, Plaintiffs' RESPA claim fails.

10 Plaintiffs' HOEPA claim must be dismissed as they have failed to make any
11 allegations that their loan falls within the ambit of the statute. The Federal Reserve has described
12 loans within the scope of HOEPA as:

14 closed-end, non-purchase money mortgages secured by a consumer's
15 principal dwelling (other than a reverse mortgage) where either: (a)
16 The APR at consummation will exceed the yield on Treasury
17 securities of comparable maturity by more than 8 percentage points for
18 first-lien loans, or 10 percentage points for subordinate-lien loans; or
19 (b) the total points and fees payable by the consumer at or before
closing exceed the greater of 8 percent of the total loan amount, or
\$547 for 2007 (adjusted annually).

20 Truth in Lending: Final Rule, 73 Fed. Reg. 44522, 44527, n.20 (Jul. 30, 2008). See also 15 U.S.C. §
21 1602(aa); 12 C.F.R. § 226.32. The mortgage at issue in this matter, however, is a purchase-money
22 mortgage falling outside the purview of HOEPA. Accordingly, Plaintiffs' HOEPA claim must be
23 dismissed.

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1 ii. FDCPA

2 Plaintiffs' FDCPA claim fails as a matter of law. Again engaging in "shotgun"
3 pleading, Plaintiffs assert that "Defendants and each of them" are "debt collectors" for the purposes
4 of the FDCPA. Defendants, however, do not meet the definition of a debt collector under the
5 statute. The FDCPA defines a debt collector as "any person ... who regularly collects or attempts to
6 collect ... debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). The
7 term "debt collector" does not include:
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9 [A]ny person collecting or attempting to collect any debt owed or due or
10 asserted to be owed or due another to the extent such activity ... (ii) concerns
11 a debt which was originated by such person [or] (iii) concerns a debt which
 was not in default at the time it was obtained by such person.

12 15 U.S.C. § 1692a(6)(G). The legislative history of section 1692a(6) indicates conclusively that a
13 debt collector does not include the consumer's creditors, a mortgage servicing company, or an
14 assignee of a debt, as long as the debt was not in default at the time it was assigned. See S.Rep. No.
15 95-382, 95th Cong., 1st Sess. 3, reprinted in 1977 U.S.C.A.A.N. 1695, 1698. See also Perry v.
16 Stewart Title Co., 756 F.2d 1197, 1208 (5th Cir. 1985). Even if any of the Defendants were debt
17 collectors under the act, the district courts in the Ninth Circuit have held that the FDCPA does not
18 apply to a non-judicial foreclosure proceeding because such proceedings are not an attempt to collect
19 a "debt" for the purposes of the statute. See, e.g., Hulse v. Ocwen Fed. Bank, 195 F. Supp. 2d 1188,
20 1204 (D. Or. 2002). See also Contreras v. Master Financial, Inc., No. 3:10-cv-0477-LRH-VPC,
21 2010 U.S. Dist. LEXIS 118017*6 (D. Nev. Nov. 4, 2010). In this case, the FDCPA is inapplicable,
22 since Defendants are not debt collectors and a non-judicial foreclosure proceeding is not an action to
23 collect a debt.
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1 iii. Fiduciary Duty

2 Plaintiffs' claim for breach of fiduciary duty fails as a matter of law. Although the
3 Nevada Supreme Court has not ruled on the issue, this Court and the Ninth Circuit Court of Appeals
4 have predicted that the Nevada Supreme Court would hold that a lender does not owe a fiduciary
5 duty, as "an arms-length lender-borrower relationship is not fiduciary in nature, absent exceptional
6 circumstances." Yerington Ford, Inc. v. General Motors Acceptance Corp., 359 F. Supp. 2d 1075,
7 1090 (D.Nev. 2004) (overruled on other grounds sub. nom. Giles v. General Motors Acceptance
8 Corp., 494 F.3d 865 (2007)). The decisions in Yerington Ford and Giles are consistent with
9 numerous holdings in other jurisdictions. See Oaks Management Corp. v. Sup. Ct. of San Diego
10 County, 145 Cal. App. 4th 453, 466, 51 Cal. Rptr. 3d 561 (2006) ("it is established that, absent
11 special circumstances not present here, a loan transaction is at arms-length and there is no fiduciary
12 relationship between the borrower and lender.") (citations omitted); AM Cosmetics, Inc. v. Solomon,
13 67 F.Supp.2d 312, 320 (S.D.N.Y. 1999); Keys Jeep Eagle, Inc. v. Chrysler Corp., 897 F. Supp. 1437,
14 1443 (S.D. Fla. 1995); G.E. Capital Mortg. Services, Inc. v. Pinnacle Mortg., 897 F. Supp. 854, 863
15 (E.D. Pa. 1995) ("Ordinarily, a lender does not owe a fiduciary duty to a borrower."); Stewart v.
16 Machias Sav. Bank, 762 A.2d 44, 46 (Me. 2000). Plaintiffs' failure and inability to allege
17 exceptional circumstances requiring the imposition of a fiduciary duty supports the dismissal of
18 Plaintiffs' fifth cause of action.

19 iv. Covenant of Good Faith and Fair Dealing

20 Under Nevada law, "[e]very contract imposes upon each party a duty of good faith
21 and fair dealing in its performance and execution." A.C. Shaw Constr. v. Washoe County, 784 P.2d
22 9 (Nev. 1989) (quoting Restatement (Second) of Contracts § 205). "[W]hen one party performs a
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1 contract in a manner that is unfaithful to the purpose of the contract ... damages may be awarded
2 against the party who does not act in good faith.” Hilton Hotels v. Butch Lewis Prods., 808 P.2d
3 919, 923 (Nev.1991). In Plaintiffs’ rather vague allegations, they assert that Defendants breached the
4 covenant of good faith and fair dealing by commencing foreclosure proceedings without the
5 “production of documents demonstrating the lawful rights for the foreclosure.” Plaintiffs, however,
6 give no details of which documents were necessary and were not in possession of Defendants.
7 Particularly, Plaintiffs make no specific assertion as to the conduct of Wells Fargo or Linear (or even
8 NDSC). Additionally, the assignment of the deed of trust, recorded on September 11, 2006,
9 demonstrates that Wells Fargo held the beneficial interest under the Deed of Trust. See Request for
10 Judicial Notice, Doc. No. 7, Exh. D. This claim must also be dismissed.
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13 v. Fraud-Based Claims

14 Plaintiffs’ Complaint raises two separate fraud-based claims. In the Tenth Cause of
15 Action, the sole supporting allegation of fraud is that NDSC did not provide documents
16 demonstrating that the beneficiary of the deed of trust was entitled to receive payments from
17 Plaintiffs. Plaintiffs’ fraud claim appears to be based upon the premise that the presentment of the
18 original promissory note is a condition to the commencement of non-judicial foreclosure proceedings
19 pursuant to a deed of trust securing the note. This contention is without merit and cannot provide the
20 foundation for a fraud claim or any other claims by Plaintiffs.
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22 The procedure for conducting a trustee’s foreclosure sale in Nevada is set forth in
23 NRS 107.080 et seq. The foreclosure process is commenced by the recording of a notice of default
24 and election to sell by the trustee. NRS 107.080(3). After the notice of default is recorded, the
25 grantor has 35 days or, in the case of owner-occupied housing, up to 5 days before the foreclosure
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1 sale, in which to cure the deficiency in payment. Three months after recording the notice of default,
2 a foreclosure sale may be conducted. NRS 107.080(2)(d). However, the trustee must first give notice
3 of the time and place of the sale. NRS 107.080(4). At the appointed time and place, a sale is
4 conducted, monies are bid, and a trustee's deed is issued. Foreclosure procedures must be followed
5 or the sale will be invalid. See Rose v. First Fed. Sav. and Loan, 777 P.2d 1318 (1989) (trustee's sale
6 invalid where notice requirements not satisfied). Section 107.080 provides that the "power of sale"
7 is conferred upon the "trustee." Section 107.080(2)(c) expressly states that the trustee can execute its
8 power of sale once "[t]he beneficiary, the successor in interest of the beneficiary or the trustee first
9 executes and causes to be recorded in the office of the recorder of the county wherein the trust
10 property, or some part thereof, is situated a notice of the breach and of his election to sell or cause to
11 be sold the property to satisfy the obligation." Plaintiffs did not cite to any authority under Nevada
12 law that a trustee's power of sale is tied to the presentment of the original note to the debtor.
13 Additionally, at least under California law, an "allegation that the trustee did not have the original
14 note or had not received it is insufficient to render the foreclosure proceeding invalid." Neal v.
15 Juarez, 2007 U.S. Dist. LEXIS 98068, 2007 WL 2140640 (S.D. Cal. July 23, 2007) (citing R.G.
16 Hamilton Corp. v. Corum, 218 Cal. 92, 97, 21 P.2d 413 (1933) and California Trust Co. v. Smead
17 Inv. Co., 6 Cal.App.2d 432, 435, 44 P.2d 624 (1935)). See, e.g., Commercial Standard Ins. Co. v.
18 Tab Constr., Inc., 583 P.2d 449, 451 (Nev.1978) (stating that Nevada courts often look to California
19 law where Nevada law is silent). Accordingly, Plaintiffs' tenth cause of action is dismissed.

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24 To the extent that the Tenth Cause of Action or any of Plaintiffs' other claims are
25 veiled claims wrongful foreclosure, such claims must be dismissed. "An action for the tort of
26 wrongful foreclosure will lie [only] if the trustor or mortgagor can establish that at the time the

1 power of sale was exercised or the foreclosure occurred, no breach of condition or failure of
2 performance existed on the mortgagor's or trustor's part which would have authorized the
3 foreclosure or exercise of the power of sale." Collins v. Union Federal Sav. & Loan Ass'n, 99 Nev.
4 284, 662 P.2d 610, 623 (Nev.1983). "The material issue of fact in a wrongful foreclosure claim is
5 whether the trustor was in default when the power of sale was exercised." Id. Here, any veiled
6 claims for wrongful foreclosure fail because Plaintiffs never allege that they were not in default on
7 the subject loan obligations when foreclosure proceedings were initiated, or that they made any
8 attempt to cure the default. Rather, Plaintiffs merely allege that the trustee did not receive proof that
9 either Linear or Wells Fargo were entitled to receive payments. Plaintiffs' claims for wrongful
10 foreclosure fail.

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13 Plaintiffs' thirteenth and fourteenth causes of action allege that Defendants committed
14 negligent and intentional misrepresentation. These causes of action are dismissed because Plaintiffs
15 failed to plead fraud with particularity as required by FRCP 9(b). "In alleging fraud or mistake, a
16 party must state with particularity the circumstances constituting fraud or mistake." FRCP 9(b).
17 Claims of intentional and negligent misrepresentation must be pled with particularity. See Glen
18 Holly Entertainment, Inc. v. Tektronix, Inc., 100 F.Supp.2d 1086, 1093 (C.D. Cal.1996) ("It is well
19 established in the Ninth Circuit that both claims for fraud and negligent misrepresentation must meet
20 Rule 9(b)'s particularity requirement."). To satisfy the particularity requirement, the Complaint must
21 plead with particularity "averments as to the time, the place, the identity of the parties involved, and
22 the nature of the fraud or mistake." Incorp Services, Inc. v. Nevada State Corporate Network, Inc.,
23 2008 U.S. Dist. LEXIS 87214, 2008 WL 4527834, 2 (D. Nev. 2008) (citing Brown v. Kellar, 97
24 Nev. 582, 636 P.2d 874 (1981) and Allwaste, Inc. v. Hecht, 65 F.3d 1523 (9th Cir. 1995)). The
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1 following allegations are the entirety of Plaintiffs' intentional misrepresentation/fraud claim, which
2 are representative of Plaintiffs' allegations of negligent misrepresentation:

3 The Defendants had a duty to represent accurately, truthfully, and completely
4 all the information to Plaintiffs in a manner that the Plaintiffs actually
5 understood the content of the information so that Plaintiffs could make and be
6 responsible for the decision whether to finance, if so, which loan to use to
7 finance, and the advantages and disadvantages of the various types of loans.

8 The Defendants intentionally misrepresented the nature of the loans, that the
9 Plaintiffs needed, the interest rate, and the terms or that a new mortgage was
10 suitable for Plaintiff, that a new mortgage of a sub-prime nature was in
11 Plaintiff's benefit, and other intentional misrepresentations which Plaintiffs
12 relied upon to inform them in their decision regarding the loan transactions.

13 See Compl. at P. 17.

14 The allegations of misrepresentation fail to state the time, place, or the
15 identity of the parties involved. Further, the nature of the fraud pled is, at best, in cursory
16 statements that fall far short of the particularity standard required to survive a motion to
17 dismiss. Accordingly, the thirteenth and fourteenth causes of action are dismissed.

18 vi. Negligence Claims

19 Plaintiffs have failed to state claims for negligence and negligence per se. To
20 sufficiently plead a negligence claim, Plaintiffs must allege facts indicating that (1)
21 Defendants owed Plaintiffs a duty of care, (2) that Defendants breached that duty, (3) that the
22 breach was the legal and proximate cause of Plaintiffs' injury, and (4) that the Plaintiffs
23 suffered damages. See Hammerstein v. Jean Dev. West, 111 Nev. 1471, 1475, 907 P.2d
24 975, 977 (1995).

25 Traditionally, a financial institution does not owe a duty of care to a borrower
26 when the lender's involvement in the loan transaction does not exceed the scope of its

1 conventional role as a lender of money. See Nymark v. Heart Fed. Sav. & Loan Assn., 231
 2 Cal.App.3d 1089, 1096, 283 Cal. Rptr. 53, 56 (1991).¹ The lender is under no duty to ensure
 3 the success of the borrower's investment. See Wagner v. Benson, 101 Cal. App.3d 27, 34,
 4 161 Cal. Rptr. 516, 521 (1980). "Liability to a borrower for negligence arises only when the
 5 lender 'actively participates' in the financed enterprise 'beyond the domain of the usual
 6 money lender.'" Id. at 35, 161 Cal. Rptr. at 521 (quoting Connor v. Great Western Sav. &
 7 Loan Assn., 69 Cal. 2d 850, 864, 73 Cal. Rptr. 369, 376, 447 P.2d 609 (1968)). Plaintiffs'
 8 Complaint does not even suggest that either Linear or Wells Fargo was actively involved in
 9 the success of the financed enterprise – the Property. Plaintiffs' eleventh cause of action
 10 must be dismissed because the alleged duties do not exist under the law and the alleged facts
 11 do not establish a foundation for any duties recognized under the law.

14 The Complaint fails to provide a factual basis supporting the claim for relief
 15 under a negligence per se theory. Rather, after reciting, without factual support and analysis,
 16 the elements necessary to demonstrate that a statute creates a negligence per se claim,
 17 Plaintiffs assert that Defendants violated NRS 645B.460 et seq., NRS 598D.100 et seq., and
 18 Federal Regulations such as RESPA, Truth in Lending, and Hoepa, etc." See Compl. at P 15.
 19 Such conclusory pleading fails to state a plausible claim for relief.

23 ¹ The Court recognizes that recent changes in federal law provide for the imposition of additional standards in
 24 the mortgage lending industry pursuant to the Congressional enactment of Title XIV of the Dodd-Frank Act, the
 25 Mortgage Reform and Anti-Predatory Lending Act (the "Mortgage Act"). The Court, however, will apply the
 26 traditional standard of care in this case in the absence of any clearly expressed intention from Congress that the
 provisions of the Mortgage Act and its implementing regulations should apply retroactively. See In re
Stratosphere Corporation Sec. Lit., 1 F. Supp 2d 1096, 1105 (D.Nev. 1999) ("There is a presumption against
 retroactive legislation deeply rooted in American Jurisprudence.").

1 Plaintiffs, moreover, failed to state a negligence per se claim because they do
2 not identify which statutes the individual Defendants allegedly breached. Plaintiffs' failure
3 to identify specific statutory violations is fatal to the negligence per se claim. See Holler v.
4 Cinemark USA, Inc., 185 F. Supp.2d 1242, 1243-44 (D. Kan. 2002) ("Notice pleading
5 requirements suggest that plaintiff must plead the specific statute on which he bases his
6 claim for negligence per se.") (add'l citations omitted). Accordingly, the twelfth cause of
7 action must be dismissed.

9 Even if Plaintiffs could properly plead the elements of negligence causes of
10 action, such claims are barred by the economic loss doctrine, which precludes recovery in
11 tort for purely economic losses arising out of the breach of the contract. See Calloway v. City
12 of Reno, 116 Nev. 250, 993 P.2d 1259 (2000). Recovery for negligence in a contract dispute
13 is barred by the economic loss doctrine. This Court has recognized that Nevada's economic
14 loss doctrine would apply in the lender-borrower context. See Yerington Ford, Inc., 359 F.
15 Supp.2d at 1090 ("Nevada applies the economic loss doctrine to bar recovery in tort for
16 purely monetary harm in product liability and negligence cases unrelated to product
17 liability.") (compiling cases). The economic loss doctrine requires the dismissal of
18 Plaintiffs' eleventh and twelfth causes of action.

21 **IV. Injunctive Relief**

22 Though Plaintiffs' fourth and fifth causes of action bring claims for injunctive relief,
23 the Court notes that such relief is not a cause of action in itself, but types of relief which is
24 only available should Plaintiffs be able to show a likelihood of success on the merits of the
25 other causes of action.
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1 The basis for injunctive relief in the federal courts is irreparable injury and the
2 inadequacy of legal remedies. See Weinberger v. Romero-Barcelo, 456 U.S. 305, 312
3 (1982). In each case, the Court must balance the competing claims of injury and must
4 consider the effect on each party of the granting or withholding of the requested relief. All
5 courts agree that a plaintiff must satisfy the general equitable requirements by showing a
6 significant threat of irreparable injury and that the legal remedies are inadequate. See
7 Arcamuzi v. Cont'l Airlines, Inc., 819 F.2d 935, 937 (9th Cir. 1987). The traditional test
8 focuses on whether the plaintiff has demonstrated a fair chance of success on the merits at
9 the minimum, a significant threat of irreparable injury, at least a minimal tip in the balance
10 of hardships, and whether any public interest favors granting the injunction. See American
11 Motorcyclist Ass'n. v. Watt, 714 F.2d 962, 965 (9th Cir. 1983). An alternative test permits
12 the plaintiff to meet its burden by showing either a combination of probable success on the
13 merits and the possibility of irreparable injury or serious questions as to these matters and the
14 balance of hardships or public interest tips sharply in plaintiff's favor. See First Brands
15 Corp. v. Fred Meyer, Inc., 809 F.2d 1378 (9th Cir. 1987). These are not separate tests but
16 the outer reaches of a single continuum. See L.A. Mem'l Coliseum Comm'n v. NFL, 634
17 F.2d 1197, 1201 (9th Cir. 1980). As discussed above, Plaintiffs have failed to demonstrate a
18 likelihood of success on the merits on all claims. Accordingly, the Court finds that
19 Plaintiffs' claims seeking injunctive relief also fail as a matter of law.
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1 **V. Declaratory Relief**

2 All of Plaintiff's claims have thus far been dismissed, therefore the Court cannot
3 grant declaratory relief based on Plaintiff's failed claims.
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5 **VI. Lis Pendens**

6 NRS 14.010 states, in part, that in an action effecting the title or possession of real
7 property, the plaintiff shall record with the recorder of the county in which the property is
8 situated, a notice of the pendency of the action, containing the names of the parties, the
9 object of the action and a description of the property. Id. 14.010(1).
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11 In this case, Plaintiff filed a Notice of Pendency of Action on October 27, 2008.
12 Because Defendants' Motion to Dismiss has been granted in full, and Plaintiffs' Complaint
13 against Defendants shall be dismissed, there no longer exists "an action affecting title or
14 possession of real property." The Lis Pendens recorded on the Property is improper and is
15 therefore expunged.
16

17 **VII. Conclusion**

18 Accordingly, **IT IS HEREBY ORDERED** that the Defendants' Motion to Dismiss
19 (#6) is **GRANTED**;

20 **IT IS FURTHER ORDERED** that the Clerk of the Court enter **JUDGMENT** for
21 Defendants and against Plaintiffs;

22 **IT IS FURTHER ORDERED** that Defendants' Motion to Release Lis Pendens
23 (#10) is **GRANTED**;

24 **IT IS FURTHER ORDERED** that the Notice of Pendency of Action recorded by
25 Plaintiff against the real property described as 8513 Brackenfield Avenue, Las Vegas,
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1 Nevada 89178, APN 176-28-210-012 as book and instrument number 20081027-0004747 is
2 hereby **EXPUNGED** and **RELEASED IN FULL**.

3 DATED this 6th day of January 2011.
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8 Kent J. Dawson
9 United States District Judge
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